



In the Matter of

Distribution of 1995, 1996, 1997 and
1998 Digital Audio Recording Funds

}
}
} Docket No. 99-3 CARP DD 95-98
}

LIBRARY
OF
CONGRESS

ORDER

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On December 27, 2000, the Library received a pleading from Alicia Carolyn Evelyn ("Evelyn") entitled "Motion to Have the Librarian of Congress Take Official Notice of Misrepresentations and Contradictions in the Settling Parties' 'Reply to Petition of Alicia Carolyn Evelyn to Set Aside the Report of the Copyright Arbitration Royalty Panel'" (hereinafter referred to as "Motion"). The pleading was not accompanied by a motion seeking leave to file it.

Copyright
Arbitration
Royalty
Panels

On November 9, 2000, the Library received the decision of the CARP in the above-captioned proceeding. Section 251.55(a) of the CARP rules provide that "[a]ny party to the proceeding may file with the Librarian of Congress a petition to modify or set aside the determination of a Copyright Arbitration Royalty Panel within 14 days of the Librarian's receipt of the panel's report of its determination." 37 C.F.R. 251.55(a). The Library received a petition to modify from Evelyn. Section 251.55(b) of the rules also permits replies to petitions to modify. 37 C.F.R. 251.55(b). The Library received a reply from the Settling Parties. At that point, the pleading cycle for filings with the Librarian to modify the CARP's report was closed.

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Examination of Evelyn's Motion reveals that it is a response—in effect a sur-reply—to the Settling parties' reply. The rules do not permit sur-replies.¹ This is purposeful, because the Librarian has a limited time in which to review the CARP's report and issue his final determination. *See* 17 U.S.C. 802(f) (Librarian has only 90 days to issue final determination from receipt of CARP report).

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In addition, Evelyn's Motion is not accompanied by a request for leave to file it. When, in the course of a CARP proceeding, a party wishes to submit a pleading that is not contemplated or permitted by the rules, the party must seek permission of the Library to accept the filing. Granting such permission, however, is far from automatic. Even if Evelyn had sought leave to file her Motion, it is likely that permission would have been denied. Evelyn's Motion does not raise any new issues or matters relevant to the CARP

¹ We note that, in addition to her Motion, Evelyn submitted a letter to the Librarian on December 8, 2000, asking that he investigate alleged violations and discrepancies by the CARP. The letter was in direct violation of section 251.33(a) of the CARP rules, which prohibits *ex parte* communications with the Librarian regarding the "merit or status of any matter, procedural or substantive, relating to the distribution of royalty fees..." 37 C.F.R. 251.33(a). The letter was returned by the Library. *See Letter of Michael Hughes, Associate General Counsel, to Alicia Carolyn Evelyn*, dated December 20, 2000.

report. The Library would only consider granting leave to file an additional pleading to petitions to modify and replies where new matters that were not, and could not have been raised in the petitions or replies, have surfaced and merit the Librarian's consideration. Evelyn's Motion does not appear to meet this standard.

Wherefore, Evelyn's Motion **IS DISMISSED**.

SO ORDERED.

Marybeth Peters
Register of Copyrights

BY: _____

William J. Roberts, Jr.
Senior Attorney

DATED: January 8, 2001